



DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LT. GOVERNOR

KEVIN M. BURKE  
SECRETARY

*The Commonwealth of Massachusetts*  
*Executive Office of Public Safety and Security*  
*Fire Safety Commission*

*Automatic Sprinkler Appeals Board*

*P.O. Box 1025 ~ State Road*

*Stow, Massachusetts 01775*

*(978) 567-3181 Fax: (978) 567-3121*

MAURICE M. PILETTE  
CHAIRMAN

PAUL DONGA  
VICE CHAIR

**Docket # 2006-104**  
**19 Washington Street**  
**Medford, MA**

**AUTOMATIC SPRINKLER APPEALS BOARD**  
**DECISION AND ORDER**

**A) Statutory and Regulatory Framework**

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G½ and Chapter 6, section 201, relative to a determination of the City of Medford Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by the Medford Lodge of Elks (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 19 Washington Street, Medford, MA.

**B) Procedural History**

By written notice, received by the Appellant on February 28, 2006, the City of Medford Fire Department issued an Order of Notice to the Appellant informing it of the provisions of M.G.L. c. 148, s. 26G½, which requires the installation of an adequate system of automatic sprinklers in certain existing buildings or structures. The building subject to the order is located at 19 Washington Street, Medford, MA. The Appellant filed an appeal of said order on April 7, 2006. The Board held a hearing relative to this appeal on May 9, 2007, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was: Ivana Jacobs and Philip Towne, members of the Board of Trustees. Appearing on behalf of the Medford Fire Department were: Chief Frank A. Giliberti, Jr., Fire Prevention Officer Patrick H. Ripley and John Bavuso, Medford Building Department.

Present for the Board were: Thomas Coulombe, Acting Chairman; Stephen D. Coan, State Fire Marshal; Alexander MacLeod; John J. Mahan; Aime R. DeNault; and George Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

**C) Issue(s) to be Decided**

Whether the Board should affirm, reverse or modify the enforcement action of the Medford Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½?

**D) Evidence Received**

1. Application for Appeal by Appellant
2. Statement in Support of Appeal
3. Order of Notice of Medford Fire Department
4. Notice of Pre-Hearing Status Conference to Parties
5. 2<sup>nd</sup> Notice of Pre-Hearing Status Conference to Parties
6. Notice of Hearing to Appellant
7. Notice of Hearing to the Medford Fire Department
8. Pictures of the Interior of the Facility (A-K)
- 9A. Hall Agreement
- 9B. Trash Permit
- 9C. Certificate of Inspection (2008)
- 9D. Alcohol License
10. Certificate of Inspection (expiration 1/29/2007)
11. 1<sup>st</sup> Floor, Floor Plan
12. Basement Floor, Floor Plan
13. Occupancy Analysis Survey (provided by the Medford Fire Dept.)
14. Medford Fire Dept. photographs (A-V)

**E) Subsidiary Findings of Fact**

- 1) The Medford Fire Department issued an Order of Notice received by the Appellant on February 28, 2006, requiring the installation of an adequate system of automatic sprinklers in a building located at 19 Washington Street, Medford, MA in accordance with the provisions of M.G.L. c. 148, s. 26G½.
- 2) The Appellant, the Medford Lodge of Elks, owns and operates a three-story facility used for a variety of activities. The top floor is an attic area that is used for storage. The second floor is used for administrative purposes and contains an officer's meeting room, a secretary's office, and offices for board members. The first floor contains several rooms identified on a floor plan as the "Member's Lounge", the "Fireside Room" and another smaller room connected thereto, which contains a dance floor. This room also leads to an outdoor deck area. Another room, described by the Appellant as the "Anti Room" is located between the Member's Lounge and the Fireside Room.
- 3) Appellant indicated that the Fireside Room and adjoining room with the dance floor are used for small functions by members and their guest. Most of the functions involve the service of a meal and occasionally involve music for entertainment and dancing purposes. The member's lounge area is routinely and regularly used for bar purposes for the service of alcoholic beverages. There was testimony indicating that when function events are occurring in the Fireside Room and/or in

the room containing the dance floor, including the deck area, occupants, particularly members, may freely walk into the Member's Lounge for alcoholic beverages. Such access is usually through the Anti Room.

- 4) There are two function hall areas in the basement floor consisting of an upper hall and a lower hall separated by a wide stairway consisting of three stairs. The lower hall level features a dance floor, a stage area, and an area for tables and chairs set-up. The upper hall contains area for tables and chairs and also contains a bar area. Testimony indicated that both the upper and lower hall areas are employed in combination during most events. This basement area also contains a bridal suite, kitchen, restrooms, a coatroom, a boiler room and several other rooms used for storage. The Appellant testified that most functions, which occur in this basement area, typically consist of birthday parties, holiday parties, banquets, christenings and wedding receptions. The Appellant indicated that most of the events involve private dining events where food is the main attraction. The establishment employs a rental contract, which strictly controls the starting and ending time of events, as well as the number of attendees at each function.
- 5) According to documents, the upper hall level consists of approximately 1,088 s.f. and the lower hall level consists of approximately 1,900 square feet, with a combined square footage of approximately 2, 988 s.f.
- 6) The Certificate of Inspection for this facility, issued by the Medford Building Department (expiration date of January 29, 2008), indicates a use group classification of "A-2" throughout the facility. Said Certificate indicates that there are separate capacity limits for several of the rooms in the facility, including: 300 persons for the basement function hall areas, 75 persons for the Fireside Room, 75 persons in the Members "Lounge" room, and 49 persons for the second floor administrative office areas. Capacity limits for the Anti-Room and the small function room (adjoining the Fireside Room) that contains a dance floor have apparently not been established.
- 7) The Board notes that a previous Certificate of Inspection, which expired on January 29, 2007, indicates that the maximum allowable capacity limit in the first floor (bar area) was established at "150 " persons. There was testimony indicating that the first floor, 150 person, occupant load was in existence during past years. Neither of the parties provided testimony providing the basis or methodology used to establish the two new separate and reduced occupancy capacities (75 and 75) for the portions of the first floor areas described as the "Members Lounge" and the "Fireside Room", as indicated on the most recent Certificate of Inspection. Additionally, the building department representative indicated that it is his understanding that the establishment of new occupancy capacity limits is probably the type of action that would require the issuance of a Building Permit.
- 8) The Appellant testified that the organization does not allow the advertisement of any events or rentals in the facility and that such rule is part of the Lodge's By-laws. The Appellant also indicated that rentals are solely for members and families related to members and that outside rentals are very limited.
- 9) The Appellant holds a "Club" alcohol beverages license, which allows for the exposing, keeping, and sale of alcoholic beverages. The member's lounge is open on a daily, and regular basis to members and their guests for the service of alcoholic beverages. The Appellant does not disagree that this area can be characterized as a "bar".

- 10) In support of the Medford Fire Department's position, Chief Giliberti testified that he believes that the building is subject to the law and that the Member's Lounge, Fireside Room, dance floor area and the Anti Room clearly have a combined capacity of 100 persons or over as specified by the statute. Additionally, the basement function hall is below grade, has no windows, and exits into the first floor function room and Anti-Room, thus requiring patrons to navigate through several hallways and doors before exiting the building. Chief Giliberti is concerned that patrons could become easily disoriented during an emergency due to the confusing layout of the building, which he described as "maze-like." The building official testified that he is comfortable with the building's current building classification as an "A-2" use group and noted that there is no fire alarm system in this building, although there is a system of smoke detectors. Chief Giliberti indicated that the basement function hall areas, based upon the floor plan and the occupancy load, are not considered an "unconcentrated" occupancy, which has been a significant factor in previous board determinations.
- 11) The Appellant contends that this facility is not used as a nightclub, bar, dancehall, or discothèque, or for similar entertainment purposes as required by M.G.L. c. 148, s. 26G1/2. It is Appellant's opinion that the function activities, which occur within this building, involve the service of a meal and that the meal is the main attraction and therefore support an exemption based upon previous decisions of this Board. The Appellant further indicated that only members and member families and their guests use the bar/Member's Lounge area and that the current occupant capacity of said lounge/bar area (75) is less than 100 persons, the capacity threshold established by the statute.

**F) Ultimate Findings of Fact and Conclusions of Law**

- 1) The provisions of the 2<sup>nd</sup> paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part states: " every building or structure, or portions thereof, of a public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code". The law was effective as of November 15, 2004.
- 2) The statutory timeline for said sprinkler installation, in accordance with the provisions of section 11, St. 2004, c.304, requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 3) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this new law which was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire, which took place in February, 2003. In said memorandum, this Board acknowledged that the statute did not contain a definition of the words "nightclub, dance hall, discotheque, bar or similar entertainment purposes." However, the board noted that the terms "nightclub" and "dance hall" are used within the scope of the "A-2" use group classification found in the 6<sup>th</sup> Edition of the Massachusetts Building Code, 780 CMR 303.3. This use group definition was drafted from nationally recognized model building code language. The commentary documents relating to the A-2 use group definitions used in said

code, indicates that such classification includes occupancies in which people congregate in high densities for social entertainment purposes. Examples given in the commentary are: dancehalls, nightclubs, cabarets, beer gardens, drinking establishments, discotheques and other similar facilities.

The board indicated that such occupancies are characterized, but not limited to, the following factors:

- a) No theatrical stage accessories other than raised platform;
- b) Low lighting levels;
- c) Entertainment by a live band or recorded music generating above-normal sound levels;
- d) Later-than-average operating hours;
- e) Tables and seating arranged or positioned so as to create ill defined aisles;
- f) A specific area designated for dancing;
- g) Service facilities primarily for alcoholic beverages with limited food service; and
- h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR, The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s. 26G½. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination, depending upon the unique characteristics of the building at the discretion of the head of the fire department. It is also important to note that some of these characteristics, such as entertainment by a live band, recorded music generating above normal sound levels and a specific area designated for dancing, may not necessarily exist in certain establishments that are considered a “bar”. Nevertheless, the provisions of M.G.L. clearly apply to “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a...**bar**...”.

- 4) In accordance with the City’s current Certificate of Inspection, certain portions of this establishment are classified as “A-2” Occupancies. This classification is an important factor in making a determination. Clearly, portions of this building are designed as and may be legally used for A-2 activities as described above or as a “bar,” and therefore likely to be within the scope of M.G.L. c. 148, s. 26G½.
- 5) The Appellant contends that the two function areas located in the basement should not be subject to the sprinkler requirements, since the greater majority of the functions which involve dancing and musical entertainment, also feature a meal as the main attraction. In prior decisions, this Board has determined that certain function facilities that feature privately organized dining events may not necessarily be subject to the s. 26G½ sprinkler law, notwithstanding the incidental appearance of live or recorded music for dancing purposes. Such “organized” private dining events, by their very nature, have pre-arranged limitations on attendance and seating because a meal is being prepared and served. They tend to have a fixed starting and ending times and do not have later than average operating hours. Whether the meal is buffet style or sit-down, each guest has a chair and a table to

sit down and eat. The tables and chairs are not positioned as to create ill-defined aisles. Although there may be dancing to live or recorded music during some portion of the event, the entertainment is not the main feature of the event. The dancing activity is limited to those persons who are attending for the purposes of eating a meal. Each guest has a seat at a table. In such situations the occupant load is not typically concentrated or crowded. The existence of **all** of the following characteristics in certain facilities is distinguishable from the “A-2 like” characteristics that this Board concluded were typical of nightclubs, dancehalls and discotheques and within the legislative intent of this law. The characteristics are as follows:

1. The facility is used for events that feature a meal as the primary attraction.
2. The facility is used for events that are organized for the purpose of a private function. Attendance for each specific event is limited and pre-arranged between the facility operator and the private event organizers. The number of guests is limited by written invitation or limited ticket availability and does not exceed the agreed upon attendance limit.
3. Each event has a definite starting and ending time.
4. Tables and chairs are arranged in well-defined aisles in such a manner to not impede easy egress;
5. There are no significantly low lighting levels,
6. The maximum documented legal capacity, based upon the available floor space, is not less than 15 feet (net) per occupant. The Board notes that this formula is consistent with the definition of the “unconcentrated” Assembly Occupancy found in 780 CMR, The State Building Code (6<sup>th</sup> Edition), table: 780 CMR 1008.1.2.
7. The characteristics of the event, as referenced above, are strictly controlled by an on-site manager and are made part of a written function event contract.

Upon reviewing the evidence, it appears that the current usage of the two basement function areas meet most of the characteristics listed above. However, the function areas clearly do not meet the “unconcentrated” occupant load requirement” (not less than 15 [net] per occupant) based upon the current legal capacity limit (300) and the current floor area (2988 s.f)

- 6) Appellant did not offer evidence to challenge a finding that the “member’s lounge” area is used as a “bar” and that the facility is classified as an “A-2”. However, Appellant contends that the lounge area and the Fireside Room have separate capacity limits of under 100 persons (75 persons each) and that this limit is less than the 100-person limit which triggers the sprinkler requirement. The Appellant indicated that this board, in prior decisions, has determined that sprinklers were not required in certain establishments that featured combined characteristics of a restaurant, function hall or entertainment venue under certain circumstances. However, in such cases the Board determined that the facility had established: (1) a clear physical and operational separation between such portions of the building used for bar or entertainment purposes and the other areas of the building and that such separated portions feature separate, legally enforceable capacity limits stated on the Certificate of Inspection for such portions and (2) that said portions consist of capacity limits of under 100 persons. Although the most

recent Certificate of Inspection has indicated separate capacity limits of under 100 persons for both the Fireside Room and the “Members Lounge” areas, the Appellant failed to sufficiently establish that a separation exists, in an operational sense, which isolates the activities of the bar and fireside function areas from one another. There was ample testimony indicating that patrons, particularly members, are allowed to travel freely between the lounge area, Anti Room, Fireside function room, and adjoining room with a dance floor and vice versa. Such free flowing occupancy creates the potential for concentrated occupancy at any given time in one of these rooms and also allows bar activities or function activities to expand from one room to another. In short, although two of the rooms (members lounge and Fireside Room) have separate, 75 person capacity limits, both of these rooms are essentially used in tandem during many function events.

Additionally, the Board notes that the previous Certificate of Inspection for this building, which expired on January 1, 2007, indicated a capacity of 150 people for the entire first floor. Neither party could explain the reasons, basis or methodology used to justify separate capacity limits for two of the rooms on the first floor and the related reduction from 150 persons to 75 persons for said rooms. Although, there are certain legitimate situations or actions which can justify such a capacity reduction, this Board will not blindly recognize or condone such a reduction if the sole reason for the capacity change is to lower the capacity limit below the 100 person statutory threshold. A determination of this Board to waive the s. 26G½ sprinkler requirements based upon recently reduced capacity limits, conducted without a Building Permit and without question, basis or methodology, would tend to frustrate the public safety intent of the law.

- 7) With respect to the second floor which consists of several rooms or areas used for administrative purposes, including officer’s meeting rooms, a secretary office, and offices for board members, the Board concludes that this floor, as currently used and designed, is not subject to the s. 26G½ sprinkler requirements. Additionally, the third floor attic space, is similarly, as currently used and designed, not subject to said requirements.

#### **G) Decision and Order**

Based upon the aforementioned findings and reasoning, the Board hereby **modifies** the Order of the Medford Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½. The Board finds that an adequate system of automatic sprinklers shall be installed throughout the basement and first floor levels of this building.

Sprinkler plans for said installation are required to be submitted to the Medford Fire Department within 90 days of the receipt this decision. Such installation must be completed in accordance with the time specified in the statute, section 11, c. 304 of the Acts of 2004, (November 15, 2007), or as otherwise extended by the head of the fire department pursuant to said law.

Furthermore, the Board hereby determines that the 2<sup>nd</sup> floor of the facility, currently used for administrative purposes and the 3<sup>rd</sup> floor, currently used for attic storage, are **not required** to be sprinklered under the provisions of s. 26G1/2, based upon the current use of said areas.

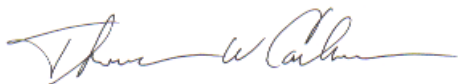
**H) Vote of the Board**

Thomas Coulombe, Acting Chairman	In favor
Stephen D. Coan, State Fire Marshal	In favor
Alexander MacLeod	In favor
John J. Mahan	In favor
Aime R. DeNault	In favor
George A. Duhamel	In favor

**I) Right of Appeal**

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



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Thomas Coulombe, Acting Chairman

Dated: August 2, 2007

**A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT TO:**

Phil Towne  
72 Westwood Road  
Medford, Massachusetts 02155

Chief Frank A. Giliberti, Jr.  
Medford Fire Department  
120 Main Street  
Medford, Massachusetts 02155-4510